The second question is one of fact.

Was gaming the primary object of the appellant club on or about the 21st May, 1933, or were facilities for gaming merely incidental to its amenities?

The answer to this question depends entirely upon the evidence by the prosecution in the lower Court.

It appears that the premises were watched on the 10th, 11th, 12th, 13th and 14th May by a detective, who was also a member of the club. On each occasion it is stated that gambling was in progress and sums of money varying from $80 to $200 were seen upon the table. Another witness, also a member of the club, stated that "the club gets most of its revenue from a 10% commission from winning bankers in the gambling." Probably this is what is represented by "*Hadia* member". The same witness stated that in April last he and some other members were in arrears for some months with subscriptions and that at a general meeting it was decided to allow a payment of $1 in lieu of all arrears. It is in evidence that the profit and loss account for the second half of 1932 shows three items of revenue: (1) Subscriptions $39 (2) rent for 8 months of a house owned by the club $240, (3) "*Hadia* member" $853.14.

The accounts contain no record of any payments in respect of birth, marriage and death benefits. It is however in evidence that one witness so far back as 1930 or 1931 received $10 for each of his two children who died. That same witness stated that though he had been a member of the club since 1929 he has heard nothing of any foot-ball team.

In my view the only conclusion that can reasonably be drawn from this evidence is that, whatever the objects of the club may have been at its inception, its primary object in May last was gaming.

There remains the question of the presumption under section 14 of the Ordinance.

I am unable to agree with counsel's contention that the presumption was rebutted by the evidence for the prosecution. On the contrary I am of opinion that it is clearly proved that gaming instruments or appliances were found in the premises of the appellant club in the circumstances indicated by the evidence and that this section places upon the officers of the club the burden of proving that the premises were not a "common gaming house" within the meaning of the law, and this they did not attempt to do.

For these reasons I am of opinion that the conviction is correct and the appeal must be dismissed accordingly.

Appeal dismissed.

Solicitors for Appellant—*Braddell Brothers.*

J. H. Bassett, (D.P.P.), for Respondent.

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

September 30, 1933.

In the Matter of 2 Indentures of Settlement both dated 2nd day of August, 1888, and made respectively between Tan Swee Hong, Yeo Cheng Keat of the one part and Khoo Cheng Teong, Khoo Cheng Teow, Khoo Teck Pye, Khoo Yew Choon of the other part and the said Tan Swee Hong, Yeo Cheng Keat of the one part and the said Khoo Cheng Teong, Khoo Cheng Teow, Khoo Teck Pye and Khoo Ton Nee of the other part.

[SINGAPORE ORIGINATING SUMMONS No. 70 of 1933]

Charitable use—Rule against perpetuities—Gift to a Chinese Joss.

Land conveyed to certain purchasers for them to apply the rents and profits in perpetuity for the benefit of a Chinese Joss does not constitute a charitable trust. Such an assignment is void as being opposed to the rule against perpetuities.

Originating Summons.

The facts are set out in the Judgment.

Burke for Applicants.

Solicitor-General for Attorney-General.

Walters for Trustees and persons appointed to represent parties interested.

MILLS, J.—The present application concerns the construction of two assignments dated the 2nd August, 1888; as the same reasoning applies to both assignments I will consider only one assignment which I will call "the assignment."

The assignment recites that the sum of Three thousand Dollars "is money belonging as to Dollars Two Thousand ($2,000) thereof to the Chinese Joss "*Bee Siok Chor* . . . and as to Dollars One Thousand ($1,000) thereof to the Chinese Joss "*Ee Hian Kong*": and in the operative part, land is conveyed to the Purchasers upon trust to apply the rents and profits for the benefit of the said Joss "*Bee Siok Chor*" and the said Joss "*Ee Hian Kong.*"

The Court is asked, *inter alia*, to declare that the land is held on trust for a charitable use and that therefore the rule against perpetuities does not apply.

In construing the assignment, the Court must put itself in the position of the Purchasers and construe their language according to their knowledge, but must avoid letting in extrinsic evidence of what the Purchasers intended under the guise of evidence as to the circumstances existing when the assignment was made.

The word "*Joss*" means "Chinese household divinity" or "Chinese idol": I find that in the circumstances of this case the former meaning was intended.

"The word "*Kong*" and "*Chor*" both mean "ancestor," but "*Chor*" is applied to the more remote ancestor.

"*Bee Siok*" and "*Ee Hian*" are the names of deceased persons: I find as a fact that Bee Siok was the great-great-great grand father and Ee

Hian was the great-grand father of Khoo Seng Seng, one of the present applicants.

To paraphrase then, the trust is for the benefit of "Chinese household divinity, *Bee Siok*, remoter ancestor" and of "Chinese household divinity, *Ee Hian*, ancestor."

The words in the recital give no assistance, for money cannot belong to an idol (cf. *Attorney-General* v. *Thirporee Soonderee.* 1 Kyshe. p. 377), and, though it is stated that the Purchasers are trustees for the said Josses, there is no evidence as to the original source of this money.

I can find no other words throwing light on the intention of the Purchasers, and therefore that intention must be ascertained solely from the expression "to apply such rents and profits for the benefit of the said Joss "*Bee Siok Chor*" and the said Joss "*Ee Hian Kong.*"

Does this expression constitute a charitable use?

I have no hesitation in deciding that it does not.

A trust is not deemed a trust for a charitable use unless it benefits the public or a section or class of the public.

If the expression under consideration is to be construed very narrowly, only the two Josses are benefited, and they are not a class or section of the public.

But under the circumstances of this case, I think the Court ought to find, and therefore I do find, that some sort of ancestor-worship was intended.

Now the Josses might be benefited in two ways

(a) materially, by the construction, repair or improvement of a temple, tomb, grave-yard, shrine, or similar work.

(b) spiritually, by the performance of ancestral rites, or religious ceremonies.

As to (a): in my opinion the expression under consideration cannot be construed to denote an intention of benefiting by new works any person other than the remote ancestor and his family: as regards existing works, there is an indication of the existence in China of a temple, a tomb, a grave-yard and a shrine, but in my opinion the existence of none of these things has been satisfactorily proved, and if it had been proved, there is no evidence that the temple or grave-yard was available for any class or section of the public, and a tomb or shrine is of no benefit to the public unless it is proved to be part of the fabric or ornamentation of such a temple, and that again has not been proved: hence I am compelled to hold that the trust, so far as concerns its material aspect, is not for a charitable use.

As to (b): in construing the will the Court may properly take Chinese family usages into consideration; though the performance of these usages, with the accompanying religious ceremonies, may be considered by the Chinese to be a pious duty, yet there is no evidence that they can benefit or solace any person other than members of the family itself; their observance therefore can lead to no public advantage, and the pious duty does not fall within the definition of a charitable duty or use.

The Court was asked to find that the descendants of *Bee Siok* are now so numerous that they may properly be held to constitute, not a family but a class or tribe, and therefore a section of the public.

No authority was quoted in support of this proposition and it does not appear to me to be reasonable. The Courts have frequently decided that a gift for the family of a Settlor is bad, and I can see no reason for holding that a gift for the family of a settlor's great-great-great grand father ought to be regarded as good.

Furthermore, I can find no general charitable intent indicated by the assignment as a whole.

I hold that as regards both assignments the gifts are not for a charitable use, and therefore they are void as being opposed to the rule against creating perpetuities. The relief prayed for must be refused.

The costs of all parties will be taxed as between solicitor and client and paid out of the estate.

Application refused.

Solicitors for Applicant—*John G. Campbell & Co.*

Solicitor-General for Attorney General.

Solicitors for Trustees and persons appointed to represent parties interested—*Allen & Gledhill.*

[APPELLATE JURISDICTION]

HUGGARD, C. J., GERAHTY AND MILLS, JJ.

October 14, 1933.

REX v. RETNAM.

[MALACCA ASSIZE CASE (CRIMINAL) No. 9 OF 1933]

REX v. CHAJI RAM.

[MALACCA ASSIZE CASE (CRIMINAL) No. 10 OF 1933]

Criminal Procedure Code S.136(1)—Sanction of Public Prosecutor—Sanction of Court —Validity of sanction.

Once the Public Prosecutor or his duly authorised deputy has exercised the discretion vested in him by Section 136 of the Criminal Procedure Code to grant or refuse a sanction and such exercise of discretion is evidenced in writing in accordance with the statutory requirements of Section 136 (3), the Court has no power either to interfere or to examine the grounds upon which such discretion has been exercised.

A Magistrate is in a different position from the Public Prosecutor inasmuch as the Code itself contains express provisions which enable his decisions to be reviewed.

The granting or refusing of a sanction by a Magistrate is an "order" within the meaning of S. 295 of the